

Introduction: Decision Making Guidance for Pension Age Disability Payment

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Introduction

1. This introductory chapter will set out the purpose of the Decision Making Guidance for Pension Age Disability Payment and will provide definitions of key terminology used throughout the Decision Making Guidance.

Purpose of the Decision Making Guidance

2. The Decision Making Guidance provides an interpretation on how to:
 - use the powers in the Social Security (Scotland) Act 2018
 - apply the rules set out in the Disability Assistance for Older People (Scotland) Regulations 2024.
3. The interpretation of the legislation will support those employed by Social Security Scotland during the decision-making process regarding Pension Age Disability Payment so that:
 - determinations are made lawfully
 - the decision-making process is consistent with legislation
 - individuals are treated fairly in accordance with the rules of Pension Age Disability Payment.
4. The main audience for this Decision Making Guidance is case managers within Social Security Scotland who will be using the chapters to make decisions on entitlement to Pension Age Disability Payment for both new applications and existing awards.
5. The Decision Making Guidance, along with training provided to case managers, provides an official interpretation of legislation for Social Security Scotland officials to make determinations of entitlement to Pension Age Disability Payment.
6. Case managers should note that approved guidance **must** be followed when applying the law in relation to Pension Age Disability Payment, including when making a determination of entitlement and following other processes.

However, a case manager may request advice through a case discussion from the Decision Support Team on the application or clarification of the Decision Making Guidance where there is any doubt or in complex cases.

7. The Decision Making Guidance uses examples to support the interpretations and explanations of the legislation. These examples are not decision-making criteria in themselves but illustrate how the criteria set out in the chapters should be applied.
8. Case managers should refer to the Operational Guidance for information on the operational steps needed to make and record a determination of entitlement and to carry out other specific processes.
9. For further information on how individuals might be affected by their disability or health condition, case managers should refer to medical guidance. Guidance is also available on how and when to request a case discussion with a Social Security Scotland practitioner.

Definitions

10. In the Decision Making Guidance for Pension Age Disability Payment:

- ‘the 2018 Act’ refers to the Social Security (Scotland) Act 2018
- ‘the 2020 Act’ refers to the Social Security Administration and Tribunal Membership (Scotland) Act 2020
- ‘the Pension Age Disability Payment regulations’ refers to the Disability Assistance for Older People (Scotland) Regulations 2024
- ‘Pension Age Disability Payment’ means disability assistance for older people given in accordance with section 31 and schedule 5 of the 2018 Act, with specific rules set out in the Pension Age Disability Payment regulations.
- ‘Short-term Assistance’ means assistance given in accordance with section 36 and schedule 10 of the 2018 Act with specific rules set out in regulation 47 and Part 1 of the schedule of the Pension Age Disability Payment regulations.

Key terminology

11. The 2018 Act and the Pension Age Disability Payment regulations state that determinations of entitlement are made by Scottish Ministers. Scottish Ministers do not personally make these determinations. Instead, officials employed by Social Security Scotland act on behalf of Scottish Ministers. This is known as the Carltona Principle.

1 Carltona Ltd v Commissioners of Works [1943] 2 All ER 560 (CA)

12. The Carltona principle states that:

“In the administration of government in this country the functions which are given to ministers (and constitutionally properly given to ministers because they are constitutionally responsible) are functions so multifarious that no minister could ever personally attend to them...The duties imposed upon ministers and the powers given to ministers are normally exercised under the authority of ministers by responsible officials of the department. Public business could not be carried on if that were not the case.”

13. Decision Making Guidance for Pension Age Disability Payment will therefore refer to Social Security Scotland or officials employed by Social Security Scotland, rather than to Scottish Ministers.

14. For simplicity, the Decision Making Guidance at times refers to any official employed by Social Security Scotland as case managers. This includes case managers, client experience officers and others.

15. Many individuals applying for, or receiving, Pension Age Disability Payment will not be interacting with Social Security Scotland themselves. Instead, a relative or caregiver may do so on their behalf. Some individuals might have an appointee or third-party representative.

16. The Decision Making Guidance uses the term ‘individual’ when referring to:

- an individual applying for, or in receipt of, Pension Age Disability Payment. This includes individuals who manage their own award of Pension Age Disability Payment without support

or

- a person who is assisting, or legally managing, another individual’s Pension Age Disability Payment application or award.

17. This could include a third-party representative who can assist an individual with their benefits, or a person, such as an appointee, power of attorney or executor, who is legally empowered to manage an individual’s benefits on their behalf.

18. Case Managers should be aware of this as the guidance does not explicitly refer to appointees or other representatives in all chapters. For more details on appointees and third-party representatives, case managers should refer to guidance on Client Representatives and operational guidance.

[END OF CHAPTER]